IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 6283 of 2005
Date of decision 15 .9.2006

Santosh Devi .. petitioner

Versus

Uttar Haryana Bijli Vitran Nigam Limited and others .. Respondents

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR
HON'BLE MR. JUSTICE M.M.S. BEDI

PRESENT: Mr.Jagbir Malik, Advocate for the petitioner
Mr. Vijender Singh , Advocate .

M.M.Kumar, J.

Smt. Santosh Devi widow of late Shri Krishan Lal has filed the instant petition under Article 226 of the Constitution claiming the benefit of family pension from the date of death of her husband and release of ex-gratia grant, gratuity and leave encashment. A further prayer has been made for issuance of a direction for payment of arrears of family pension, ex gratia grant, gratuity and leave encashment with 18 percent interest.

Krishan Lal, husband of the petitioner was appointed as a work charge T. Mate on 19.2.1977. He was promoted as workcharge Asstt. Lineman on 5.8.1983. He was again promoted to the post of Workcharge Lineman on 1.6.1984. His services were regularised on 31.10.1991 as regular Asstt. Lineman subject to certain terms and conditions. He was asked to report for duty after getting himself examined from the Chief Medical Officer/ Civil Surgeon, Karnal. He joined the duty as regular Asst. Lineman on 31.10.1991 after his medical examination by the Civil Surgeon, Karnal. However, unfortunately he died on 2.1.1992. The petitioner submitted a representation alongwith a copy of the judgement in the case of

Sharmila Devi vs. UHBVNLtd. (Civil Writ Petition No. 6837 of 2001) and requested for release of all the benefits. On 10.2.2005 she served advance notice through her counsel and requested the respondents for the release of her pensionary benefits. Despite her personal visits to the office of the respondents the claim made by the petitioner was not accepted and it was disclosed to her orally that her claim was not to be accepted because her husband had served the department as a regular employee from 31.10.1991 to 2.1.1992 which is less than one year after regularisation of his services.

The claim of the petitioner has been opposed by placing reliance on Clause 4 of the Family Pension Scheme 1964 and it was pointed out that the rule required minimum period of one year of continuous service without break which the husband of the petitioner did not fulfill. It was also submitted at one stage that husband of the petitioner did not undergo medical check up and therefore the petitioner cannot claim family pension and other benefits. On 8.9.2006, we had adjourned the proceedings in order to enable the counsel for the respondent to produce the record substantiating the plea of lack of medical examination. He has stated before us that medical certificate is not on record which show that he has undergone medical fitness test before the Civil Surgeon, Sonepat.

Having heard the learned counsel for the parties, we are of the considered view that the instant petition deserves to be allowed as the petitioner fulfills all the necessary requirements of Family Pension Scheme 1964 as incorporated in Punjab Civil Services Rules, Volume II. It would be appropriate to make a reference to clause 4 of the Scheme which reads as under:

" 4. This scheme is administered as below:

The family pension is admissible in case of death while in service or after retirement on or after the 1st July, 1964, if at the time of death, the retired officer was in receipt of a compensation, invalid, retiring or superannuation pension. The Family Pension will not be admissible in case of death after retirement if the retired employee at the time of death was in receipt of the gratuity only. In case of death while in service a Government employee should have completed a minimum period of one year of continuous service without break.

Note-1: The term one year continuous service used in para 4(i) above is inclusive of permanent/ temporary service in a pensionable establishment but does not include periods of extraordinary leaves, boy service and suspension period unless that is regularised by the competent authority or before completion of one year continuous service provided the deceased government employee concerned immediately prior to his recruitment to the service or post was examined by the appropriate Medical Authority and declared fit by that authority for Government service."

The afore-mentioned Scheme has been subject matter of consideration of this Court in the case of Savitri Devi v. State of Haryana and others 1996(2) RSJ 854. A Division Bench of this Court has held that non completion of one year of service is no ground to deny the benefit of family pension to a widow. The afore-mentioned view has been repeated followed by this Court in the cases of Sundra Devi v. U.H.B.V.N. Ltd 2005 (4) SCT 634; Krishana Devi v. U.H.B.V.N. Ltd (Civil Writ Petition No.

11285 of 2004 decided on 31.1.2005); Meena Kumari v. U.H.B.V.N. Ltd (CWP No. 1083 of 2003 decided 9on 28.7.2003) and Kusum Devi v. U.H.B.V.N.Ltd (CWP No. 86 of 2003 decided on 28.7.2003).

In the present case, the petitioner has been appointed on 19.2.1977. His services were regularised on 31.10.1991 and he expired on 2.1.1992 which shows that the petitioner has completed 15 years of service if the period before the date of his regularisation is taken into consideration. The afore-mentioned interpretation of law on 1964 Scheme is imperative because there is nothing in the Scheme which would suggest excluding the work charge period. We are inclined to include the afore-mentioned period as Rule 3.17 of the Punjab Civil Services Rules which excluded the work charge service from being counted as qualifying service was struck down by a Full Bench of this Court in the case of Kesar Chand v. State of Punjab 1988 (2) PLR 223. It was further held that all work charge service preceding regularisation shall be considered as qualifying service for the purposes of granting pensionary benefits. If the work charge service could be considered as qualifying service for a pensioner we see no reason not to do so when her widow claims family pension especially when there is nothing in clause 4 prohibiting to consider such service as qualifying service. Accordingly, we hold that the instant petition deserved to be allowed.

The absence of medical certificate on record of the respondent does not prove that the petitioner's husband did not undergo medical test because otherwise he would not be permitted to join. There is nothing on record suggesting that the husband of the petitioner was allowed to join subject to his medical fitness. Therefore, nothing tuns on the absence of

medical certificate.

In view of the above, the writ petition succeeds and a direction is issued to the respondents to release family pension to the petitioner w.e.f. the date she has lost her husband i.e. 2.1.1992 and to release her ex-gratia grant, gratuity and leave encashment. Let the arrears of family pension, ex-gratia grant, gratuity and leave encashment be calculated and released within a period of two months from the date of receipt of certified copy of this order. The petitioner shall also be entitled to interest @ 9 percent p.m. from the date of death of her husband till the date of payment.

(M.M.Kumar)
Judge

(M.M.S.Bedi)
Judge

15.9.2006
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